

## REMARKS

This Application has been carefully reviewed in light of the Office Action mailed May 5, 2005. At the time of the Office Action, Claims 1, 2 and 10-15 were pending in this Application. Claims 1, 2, and 10-15 were rejected. Claims 1 and 10-14 have been amended to further define various features of Applicant's invention. Applicant respectfully requests reconsideration and favorable action in this case.

### **Rejections under 35 U.S.C. § 112**

Claims 10-13 were rejected by the Examiner under 35 U.S.C. §112, second paragraph, as being indefinite and failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention. Applicant amends Claims 10-13 to overcome these rejections and respectfully requests full allowance of Claims 10-13 as amended.

### **Rejections under 35 U.S.C. § 102**

Claims 1, 2, 10, 14 and 15 were rejected by the Examiner under 35 U.S.C. §102(b) as being anticipated by U.S. Patent 6,235,721 issued to Shibnath Ghosal ("Ghosal"). Applicant respectfully traverses and submits the cited art does not teach all of the elements of the claimed embodiment of the invention.

A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1997). Furthermore, "the identical invention must be shown in as complete detail as is contained in the ... claim." *Richardson v. Suzuki Motor Co. Ltd.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). Applicant respectfully submits that the art cited as anticipatory by the Examiner cannot anticipate the rejected Claims, because the cited art does not show all the elements of the present Claims.

The cited art discloses a Table of “Comparative Suppressive Effects of DNA Strand Scission.” (See Col. 14, lines 24-41) The point of the Table is to show the effect of Vitamin C and blends of Vitamins C and E on DNA. According to the Table, Vitamin C and a blend of Vitamins C and E have the unwanted effect of “DNA Strand Scission” which results in an unwanted linear form of DNA. (See Compositions 4 and 5 of the Table for “Linear Form of DNA” showing 30% and 60 % linear DNA.) It is clear to one of ordinary skill in the art that Table 1 of Ghosal is directed to a composition comprising a majority amount of DNA and a minor amount of Vitamin C and blends of Vitamins C and E. For example, in Table 1, Composition 1=DNA alone, Composition 2 = DNA + OH radical, Composition 3 = DNA + OH radical + Capros, Composition 4 = DNA + OH radical + #1 vitamin C/E blend, and Composition 5 = DNA + OH radical + vitamin C. And as noted the DNA compositions containing vitamins contained an hydroxyl radical generated from  $\text{Cu(en)}_2$  – hydrogen peroxide reaction which resulted in DNA strand scission. Ghosal certainly does not teach that DNA has the ability to reduce the oxidative rate of a vitamin. In fact, based upon Ghosal one would not be inclined to combine DNA and Vitamin C or a blend of Vitamins C and E for any reason. Ghosal actually teaches the combination of CAPROS with ascorbic acid. And the present claims are directed to “purified” amounts of nucleic acids, not DNA subjected to a  $\text{Cu(en)}_2$  - hydrogen peroxide reaction. Consequently, it is respectfully submitted that Ghosal does not teach a vitamin composition comprising sufficient nucleic acids to reduce the oxidative damage to the vitamin. Withdrawal of the rejection is respectfully requested.

## CONCLUSION

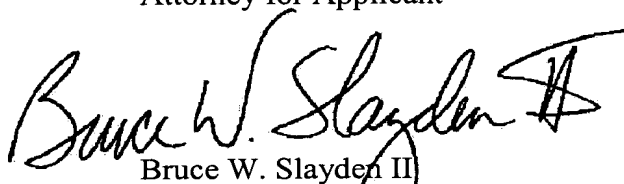
Applicant has now made an earnest effort to place this case in condition for examination. Applicant respectfully requests reconsideration of the application and allowance of the pending claims.

Applicant believes no fees are due, however, the Commissioner is hereby authorized to charge any fees to Deposit Account No. 50-2148 of Baker Botts L.L.P. in order to effectuate this filing.

If there are any matters concerning this Application that may be cleared up in a telephone conversation, please contact Applicant's attorney at 512.322.2606.

Respectfully submitted,

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